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SETTLEMENT AGREEMENT

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December 1, 2015

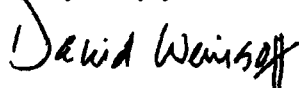
Richard Norwood
Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
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Washington, DC 20044-7415

Re: *California River Watch, an IRC Section 501(c)(3), non-profit, public benefit corporation v. George Adamian, et al,*
USDC Case No.: 2:15-cv-01913-PA (PJWx)

Dear Mr. Norwood:

Enclosed please find a fully executed Settlement Agreement and Release ("Agreement") by the parties to the above-referenced action. This Agreement is being served pursuant to § 505(c)(3) of the federal Clean Water Act, 33 U.S.C. § 1365(c)(3), for agency review and comment, where appropriate, within 45 days of service hereof.

Very truly yours,


David J. Weinsoff

DJW:lhbm

Enclosure

cc: John D. Wilson, Esq.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and among California River Watch, a nonprofit corporation, on behalf of itself and its members ("CRW"), and American Industrial Services, George Adamian, and South Street Property, LLC (collectively "AIS"). CRW and AIS are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

RECITALS

- A. California River Watch represents and warrants that it is an Internal Revenue Code 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.
- B. American Industrial Services is a privately owned and operated scrap recycling facility located at 5626 Cherry Avenue in Long Beach, California ("Site"). Mr. George Adamian is the owner and operator of the AIS facility. South Street Property, LLC is a limited liability corporation located in Los Angeles County, California having a legal interest in the ownership of the real property upon which the facility is located. The Site is subject to various federal and state regulatory requirements under the federal Clean Water Act ("CWA"), including compliance with the State Water Resource Control Board's General Industrial Activities Storm Water Permit ("General Permit").
- C. On December 29, 2014, CRW served AIS with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. Principal among the issues of alleged non-compliance identified in the Notice Letter are failures of the Best Management Practices ("BMPs") in the AIS facility Storm Water Pollution Prevention Plan ("SWPPP"), assuming it has one, to control discharges of non-storm water from the Site. AIS failed to respond to the Notice Letter (as well as CRW's February 17, 2015 written reminder of the 60-Day notice period). CRW filed its Complaint on March 16, 2015 (*"California River Watch v. George Adamian, American Industrial Services, South Street Property, LLC*, USDC Central District, Case No. 02:15-cv-01913), and following the Defendants' failure to respond to service of and provide a timely answer to the Complaint, CRW initiated "Default" proceedings on April 27, 2015. On June 17, 2015, Counsel for AIS contacted CRW to initiate settlement of this dispute.
- D. AIS denies all of CRW's allegations that it is liable to CRW for any claims that were, or could have been asserted against the Owners and Operators based upon the Notice Letter, or based upon any other Released Claim of CRW as detailed in Paragraph 5 of this Agreement.

E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter, including the exchange of information regarding the Site, as well as engaging in a negotiation and technical dialogue regarding settlement.

F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and AIS, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter, or for any other Released Claim as detailed in Paragraph 5 of this Agreement.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

TERMS AND CONDITIONS

1. Parties Bound By This Agreement and Length of Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and AIS, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The "Effective Date" is the last date on which the signature of a Party to this Agreement is executed, and the "Termination Date" is the date that all of the requirements under Sections 2 and 3 are finished by AIS.

2. Actions By AIS. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, AIS' Storm Water Pollution Prevention Plan ("SWPPP") shall be prepared, updated and kept revised as necessary to ensure it is consistent with each and every requirements of the new General Permit (Water Quality Order 2014-0057-DWQ). A copy of the most recent SWPPP shall be provided to the Los Angeles Regional Water Quality Control Board.

3. Actions By CRW. In exchange for the delivery, execution, and performance of this Agreement, CRW shall perform the following:

3.1. Submittal of Agreement to DOJ. Within five (5) business days after the Effective Date of this Agreement, CRW shall provide the Federal District Court for the Central District of California in Case No. 2:15-cv-01913-PA (PJWx) with a Notice of Settlement, and shall submit this Agreement to the United States Department of Justice ("DOJ") for the statutory 45-day agency review period set forth in 33 U.S.C. ' 1365(c).

3.2. Filing Notice of Dismissal with Court. Within five (5) business days after the expiration of the agency review period discussed in Section 3.1, CRW shall file with the Federal District Court a Notice of Dismissal whereby the Complaint and all claims therein shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

4. Fees and Costs. AIS shall pay CRW the sum of Fifteen Thousand Dollars (\$15,000.00) as full reimbursement for CRW's investigative and attorneys' fees and costs, and any other Released Claim detailed in Paragraph 5 of the Agreement, as follows:

- Payment shall be made in four (4) equal payments of Three Thousand Seven Hundred and Fifty Dollars (\$3,750.000), the first payment to be made within five (5) days after CRW's filing with the District Court the Notice of Dismissal under Section 3.2 above, but no earlier than January 20, 2016, and the remaining three payments to be made thirty (30), sixty (60), and ninety (90) calendar days thereafter.
- Payment shall be made by check to "California River Watch" and mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469.

Payment shall constitute full and complete satisfaction of any and all claims by CRW for attorneys' fees and costs in connection with this matter up to and including the Effective Date.

5. Mutual Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against AIS, and AIS against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act or any other Released Claim as detailed in this paragraph. CRW and AIS, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge AIS and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims asserted in the Notice Letter under the Clean Water Act concerning the Site. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

The "Released Claims" herein are inclusive of any and all claims under the Federal Water Pollution Control Act (the "Clean Water Act" – 33 U.S.C. ' 1251 *et seq.*), the Resource Conservation and Recovery Act ("RCRA" – 42 U.S.C. ' 6901 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" - 42 U.S.C. ' 9601 *et*

seq.), the California Hazardous Substance Account Act ("State Superfund" – Cal. Health & Safety Code ' 25300 *et seq.*), the California Hazardous Waste Control laws (Cal. Health & Safety Code ' 25100 *et seq.*), the California Porter-Cologne Water Quality Control Act (Cal. Water Code ' 13000 *et seq.*), the California Safe Drinking Water and Toxicity Enforcement Act of 1986 ("Proposition 65" – Cal. Health & Safety Code ' 25249.5 *et seq.*), any amendments to the foregoing, and any claims based on the common laws of nuisance, trespass, waste, ultra-hazardous activity or negligence, and/or any other similar or related-type causes of action or theories of recovery, whether based on statute or common law, or based in law or equity.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

6. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by AIS, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by AIS, which expressly denies any such liability or wrongdoing.

7. Force Majeure. AIS shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of AIS or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond AIS' reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

8. Breach of Agreement and Dispute Resolution. Any disputes between CRW and AIS concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures. Failure to satisfy the payment condition in Section 4 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

8.1. Good Faith Negotiations. CRW and AIS shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 8. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

8.2 Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

9. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally- recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
Email: lhm28843@sbcglobal.net

If to AIS:

John D. Wilson, Esq.
Law Offices of John D. Wilson
1900 Avenue of the Stars / Suite 960
Los Angeles, CA 90067
Tel: (310) 277-2323
Email: johnw@jdwilsonlaw.net

The foregoing addresses may be changed by Notice given in accordance with this Section 9. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

10. Attorneys' Fees. Other than the payment to CRW under Section 4 each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

11. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW, AIS, and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

12. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

13. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

15. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

16. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

17. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

18. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete here from such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

19. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.
20. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.
21. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.
22. Confidentiality. The parties and their counsel hereby warrant and agree to maintain the terms and conditions of this Settlement Agreement in the strictest confidence except as required by law or by judicial or administrative process or regulation. The Parties agree to keep strictly confidential all terms and conditions, including amounts, in this Settlement Agreement and shall not disclose, discuss or make public in any way the terms of this Settlement Agreement to any other person other than their legal and/or financial advisors except as required by law or by judicial or administrative process or regulation. Notwithstanding the foregoing, no party shall be deemed to be in breach of the foregoing covenant so long as any such statement or disclosure is required by law, regulation or order of court in the reasonable opinion of counsel to the disclosing party.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their
duly authorized representatives.

AMERICAN INDUSTRIAL SERVICES

By: 

Dated: 11/30/15

GEORGE ADAMIAN

By: 

Dated: 11/30/15

SOUTH STREET PROPERTY, LLC

By: 

Dated: 11/30/15

CALIFORNIA RIVERWATCH

By: 

Board President

Dated: 11/18/2015

CERTIFIED MAIL™

Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930



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Richard Norwood
Citizen Suit Coordinator
U.S. Department of Justice
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P.O. Box 7415
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Washington, DC 20044-7415

X-RAYED

DEC 07 2015

FROM: LAW OFFICE OF DAVID WEINSOFF
CARR: United States Postal Service
TRK#: 70130600000027463755
RCVD: 12/7/2015 1424

TO: Hebb, Kevin M. (ENRD)
PH: 202-373-7550
BDG: PH
RM:
PCS: 1



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RTE:

MSC: PH2121

Hebb, Kevin M. (ENRD)